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IN THE

Supreme Court of the United States

October Term, 1938.

No. 416

UNITED STATES OF AMERICA,
Petitioner,

v.

BERTELSEN & PETERSEN ENGINEERING COMPANY.

BRIEF AMICUS CURIAE.

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IN THE

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No. 416

UNITED STATES OF AMERICA,

Petitioner,

v.

BERTELSEN & PETERSEN ENGINEERING COMPANY.

MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE.

Comes now the undersigned and moves for leave to file instanter the annexed brief as *Amicus Curiae.*

The requisite consents have been filed with the Clerk.

JOHN E. HUGHES,
First National Bank Bldg.,
Chicago, Illinois,
Amicus Curiae.

BRIEF AMICUS CURIAE.

In *Stearns Co. v. United States, 291 U. S. 54,* this Court, speaking through Mr. Justice Cardozo, said at page *62:*

> "No one shall be permitted to found any claim upon his own inequity or take advantage of his own wrong."

The Attorney General applauded this principle in the eulogy of Mr. Justice Cardozo which he recently delivered in this Court. Since the Government accepts the decision below on every point except the authority of the District Court to entertain the case, it concedes in this case that it did two wrongs.

First it did wrong in crediting the 1917 overpayment to an outlawed tax in defiance of the statute prohibiting this action.

Secondly, it did wrong in not refunding the overpayment when the illegality of the credit was called to its attention by the taxpayer, as it is expressly commanded to do by the *Revenue Act of 1928. McEachern v. Rose, 302 U. S. 56.* Inasmuch as it is settled by the Courts below that the statutory law commanded the return of the money to the taxpayer, the Government also disregarded the mandate imposed by *Article 2, Section 3 of the Constitution* upon the executive:

> "He shall take care that the laws be faithfully executed."

(Kendall v. United States, 12 Pet. 524.)

The Government now seeks to keep the money and thus profit by these conceded wrongs. Whether it shall be permitted "to take advantage of its own wrong" is for this Court to decide.

IMPORTANCE OF THE QUESTION PRESENTED.

On page 26 of its brief the Government asks this Court to hold that the credit of a conceded overpayment for one year to an alleged tax for another year ousts the jurisdiction of the District Court. If this Court makes this decision it should do so with a full realization that the statute whereby Congress intended to allow taxpayers to go into their local District Courts is thereby amended to provide that they may only do so at the option of the Commissioner. Furthermore after they do so if the Commissioner believes he will lose the suit he can oust the jurisdiction of the District Court by conceding the overpayment for the year of suit and crediting it to an alleged tax for a later year, which is neither due nor collectible. If the taxpayer then goes into the Court of Claims and sues for the credit, when the taxpayer is about to win that suit and after the time to again go into the District Court has expired, the Commissioner may reverse the credit and hold that the refund of the overpayment is outlawed. In *Harvey Co. v. United States, 23 F. Supp. 444*, the Court of Claims said at page *449:*

> "The Commissioner possessed authority to reverse the credits. *Daube v. United States, 289 U. S. 367, 372.*"

Inasmuch as millions of tax returns are filed each year, not only for income, but for Social Security, Excise and other taxes and taxation has become about the most im-

portant economic factor in the country, the Court should appreciate the consequences of a construction which will force thousands of taxpayers into the Court of Claims, already congested by litigation arising out of the voluminous activities undertaken by the Government in recent years. It will mean not only inconvenience and expense but delay with the resultant accumulation of interest against the Government.

BOTH COURTS BELOW CORRECTLY RULED SUIT WAS FOR RECOVERY OF 1917 TAXES AND THE STATUTE CLEARLY CONFERS JURISDICTION.

Jurisdiction is conferred by *Section 24 of the Judicial Code (U. S. C. Title 28, Sec. 41)*. Since the statute is quoted in the other briefs it need not be requoted here. The words of this statute are plain. They confer jurisdiction if two conditions, and two conditions only, exist. (1) The tax sued for must be paid to a collector. It was here. (2) The collector to whom the tax was paid must be dead or out of office when the suit was begun. *Lowe Brothers Co. v. United States, 304 U. S. 302, 305, 306.* The Collector who collected the tax here was out of office when suit was begun. Hence jurisdiction is patent.

When these conditions exist the statute cannot be construed as conferring any less jurisdiction of a suit for the tax than that which is conferred upon the Court of Claims, without disregarding the words of the statute "concurrent with the Court of Claims." This phrase was construed in *United States v. Jones, 131 U. S. 1, 19.* With reference to the jurisdiction of the District Court and the Court of Claims, it was said:

> "It is clearly the same jurisdiction."

Nor should the District Court be held to have a less jurisdiction of suits to recover tax, where the above requirements of the statute have been met, than that possessed by the Court of Claims without considering the historical truth expressed by the late Mr. Justice Cardozo in *Moore Ice Cream Co. v. Rose, 289 U. S. 373, 382,* in referring to a suit against a collector as:

"A relic of obsolete modes of thought."

See also the discussion in that case. An action against Government officers springs from the maxim, "The King can do no wrong," which was applicable in England but never had any justification here. There the action was allowed by the Judges to protect the liberties of the people. Otherwise there would have been no redress at the time such action was first allowed.

In the two cases now on review, two Circuit Courts of Appeals and two District Court Judges have unanimously ruled that the suit is for the recovery of 1917 taxes and that the year of overpayment is the proper year for which to sue when the overpayment is wrongfully credited to a later year. The same ruling was made in *Untermyer v. Bowers, 79 F. (2d) 9 (C. C. A. 2).* In a case where the credit was void as in the case at bar, it has been affirmatively held by the Court of Claims that suit should be brought for the year of overpayment, not for the year to which credit is made. *Parks & Woolsen Machine Co. v. United States, 58 F. (2d) 868,* cer. den. *287 U. S. 634.* See also *U. S. Refractories Co. v. Commissioner, 23 B. T. A. 872.* See also *G. C. M. 4879, C. B. VII, p. 90.*

We know of no case in which a suit for the year of overpayment has been held not a suit for the proper year and the Government cites no case which so holds.

PURPOSE BEHIND STATUTE.

The purpose behind the statute was to allow taxpayers to litigate claims in their own district. The reasons for this are stated in *Schwab v. United States, 70 F. (2d) 34, 35 (C. C. A. 7)*, where it is said the Court will take judicial notice of them. This policy of allowing taxpayers to litigate taxes in their own home district is further evidenced by the Act creating the Board of Tax Appeals. It is provided by this act that the time and place of the meetings of the Board and its divisions "shall be prescribed by the Chairman with a view to securing a reasonable opportunity to taxpayers to appear before the Board, or any of its divisions with as little inconvenience and expense to taxpayers as practicable." *(26 U. S. C. Sec. 605.)* It is also provided *(26 U. S. C. Sec. 630 (b))* for traveling and other expenses of employes of the Board, and it is provided for expense of the members of the Board *(26 U. S. C. Sec. 602 (d))*. Under this provision the Board holds hearings at various places throughout the country. The Revenue Bureau has recently adopted this same decentralization policy and established offices in various cities of the country with the same authority to settle and close cases which formerly existed only in Washington.

R. S. 3226 IS NOT JURISDICTIONAL.

The jurisdiction of the Court below is not conferred by *R. S. 3226* but by *Section 24 (20) of the Judicial Code. R. S. 3226* is not the statute which gives the consent of the United States to be sued. The statute whereby the United States consented to be sued is *Section 24 (20) of the Judicial Code. R. S. 3226* merely requires a demand

as a condition precedent to a suit consented to by another statute. This Court has said that such a demand "may be insisted upon by the defendant, whether the Collector or the United States," but so far as we can discover, has never said that the statute is jurisdictional.

Statutes requiring a demand as a condition precedent to suit, which may be insisted upon by a defendant, are quite common. It has always been held that the requirements of such a statute may be waived. See *Actions, 1 Corpus Juris, Sec. 82, p. 981.* It has never been held that they are jurisdictional.

In *Western Wheeled Scraper Co. v. United States, 72 F. (2d) 487, 488 (C. C. A. 7)*, the Court said with reference to *R. S. 3226:*

> "As we read this section of the statute, it was intended to save the parties the expense of litigation and give the Commissioner an opportunity to settle controversies before suit is commenced thereon, not for the purpose of conferring jurisdiction upon the courts."

See also *United States v. Piedmont Mfg. Co., 89 F. (2d) 296, 300 (C. C. A. 4).* It is submitted that the decisions of this Court are inconsistent with any other conclusion. For example, *R. S. 3226* expressly provides no suit shall be begun

> "until a claim for refund or credit has been duly filed with the Commissioner of Internal Revenue according to the provision of the law in that regard and the regulations of the Secretary of the Treasury established in pursuance thereof."

The statute clearly states that the claim which it requires to be filed must be filed according to "the regulations of the Secretary of the Treasury." In other

words the requirement that the claim be filed according to the regulations, is a statutory requirement. If this statute were jurisdictional this statutory requirement could not be waived, but in *Tucker v. Alexander, 275 U. S. 228,* this Court held it could be waived. In an opinion by the same Justice in *United States v. Felt & Tarrant Mfg. Co., 283 U. S. 269,* this Court said at page *272:*

> "But in *Tucker v. Alexander* the right of the Government to insist upon compliance with *the statutory requirement* was emphasized. Only because that right was recognized was it necessary to decide whether it could be waived. The court held that it could, and that in that case it had been waived by the stipulation of the collector filed in court. Here there was no compliance with the statute nor was there a waiver of its condition, since the Commissioner had no knowledge of the claim and took no action with respect to it." (Italics ours.)

Again the Court said in that case at page *273,* expressly referring to the statute:

> "Compliance may be dispensed with by waiver as an administrative act."

Further it will be observed that the requirement of *R. S. 3226* that suit be brought within two years of the rejection of a refund claim has nothing to do with any regulation. This Court held in *Retzer v. Wood, Collector, 109 U. S. 185,* that it could be waived and could not be raised in this Court where it was not raised below.

In the case at bar the question now sought to be raised was not raised at the trial of the case. If it had been raised the taxpayer would have been in a position to have

met it. Furthermore the allegation of Paragraph 5 of the petition which alleged the filing of a timely refund claim was expressly admitted. Taxpayer could only understand it was conceded.

The practical consequences of holding that this point cannot be waived but can be suddenly pulled out of the hat by the Government in a Court of Appeals is this: Attorneys who try these cases for the Government are skilled specialists. When a suit is brought the first thing they do is to examine the file to ascertain if there has been compliance with *R. S. 3226.* If there has been, they do not trouble about the matter any more. If there has not been, they plead the point and set it up in defense. On the other hand, attorneys for taxpayers are often not specialists and sometimes try only two or three tax cases in a lifetime. They do not bother to prove points which are not contested at the trial but are expressly admitted. In *General Utilities and Operating Co. v. Helvering, 296 U. S. 200,* this Court said at page *206:*

> "Always a taxpayer is entitled to know with fair certainty the basis of the claim against him. Stipulations concerning facts and other evidence are properly accommodated to issues adequately raised."

To allow the Government to first make such a contention in a Court of Appeals and throw the case out for want of jurisdiction (when the facts admitted below actually exist and if challenged below would have been proved) is to open the way for gross injustice. If the point is not jurisdictional it cannot be made for the first time in an Appellate Court. *United States v. Atkinson, 297 U. S. 157, 159; Blair v. Oesterlein Machine Co., 275 U. S. 220, 225; United States v. Bollman, 81 F. (2d) 1009, 1010; Corpus Juris Secundum, Sec. 223, p. 428* and notes.

EVEN IF R. S. 3226 IS JURISDICTIONAL THE RECORD SHOWS COMPLIANCE.

The record unquestionably shows that claims for refund were on file before the Certificate of Overassessment was issued. This certificate states that these claims were considered. From the legal proposition that the Commissioner could not have legally allowed the overpayment unless these claims were timely and from the fact that he did allow it, a presumption arises that the claims were timely. This presumption was not rebutted. The rule of law applicable here is thus stated in *Stearns v. United States, 291 U. S. 54*, at page *63:*

> "Acts done by a public officer which presuppose the existence of other acts to make them legally operative are presumptive proof of the latter".

This Court cites many cases as authority for this proposition of law. The presumption was not rebutted in this case and it alone disposes of the point.

IT IS NOT NECESSARY THAT THE COLLECTOR DO ANY WRONG TO AUTHORIZE SUIT AGAINST THE UNITED STATES.

It is not necessary that the Collector do any wrong to authorize suit either against him or against the United States. If it is then payments made by honest mistake of fact or law cannot be recovered. As Mr. Justice Holmes, speaking for this Court in *United States v. Emory, Bird, Thayer Realty Company, 237 U. S. 28*, said at page *31:*

> "The right to sue the collector for an unjustified collection was given by the common law".

It was the common law action of *assumpsit. Kentucky Improvement Co. v. Slack, Collector, 100 U. S. 648, 654; Elliott v. Swartwout, 10 Pet. 137.* At common law protest was necessary but as said in *Moore Ice Cream Co. v. Rose, 289 U. S. 373, 379:*

> "A high-minded Government renounced an advantage that was felt to be ignoble and set up a new standard of equity and conscience".

At common law the action of *assumpsit* lay, for payments made by mistake or payments which should not be equitably retained by the person receiving them. Wrongdoing on the part of the defendant was not necessary. See statement of Lord Mansfield in *Moses v. McFarlane, 2 Burroughs, 1005,* quoted in *86 F. (2d)* at page *233,* and *United States v. Jefferson Electric Mfg. Co., 291 U. S. 386,* at pages *402, 403.* In *52 Harvard Law Review, 496, 498,* it pointed out that the absence of obstacles to taxpayers recovering voluntary payments of taxes has the effect of stimulating the payment of taxes and does not put a premium on withholding money from the Government and thus is ultimately to the advantage of the revenue. Hence, we submit that wrongdoing on the part of a Collector is not necessary. The statute conferring jurisdiction quoted on page 29 of petitioner's brief, not only allows an action against a Collector for money "erroneously or illegally" or "wrongfully" collected, but also allows an action for "any sum alleged to have been excessive". The words are in the alternative. Any tax paid above what the law exacts is "excessive".

Nor can anything be made of the point that the original claim was for special assessment. Since the Commissioner allowed it but refused to pay it on other grounds, the case is exactly the same as *United States v. Factors & Finance Co., 288 U. S. 89, 93,* distinguishing the case of *Williamsport Wire Rope Co. v. United States, 277 U. S. 551,* cited by the petitioner.

THE CREDIT DOES NOT OUST THE JURISDICTION OF THE DISTRICT COURT FOR THE YEAR OF OVERPAYMENT.

At the top of page 26 of its brief the Government advances the following proposition:

> "Under such circumstances, we submit that the District Court has no jurisdiction of a suit for the year of original overpayment, and that the proper *forum* is the Court of Claims, in a suit on the year to which the overpayment was applied."

When the taxpayers proceeded on this theory they have been defeated. The Court of Claims in *Parks & Woolsen Machine Co. v. United States, 58 F. (2d) 868;* cer. den. *287 U. S. 634,* held against it and the Government vigorously opposed the taxpayer's petition for the writ of *certiorari* on the ground that this decision was right. Judge Littleton who wrote the opinion in that case in a subsequent dissenting opinion stated he thought it was erroneous. The majority of the Court of Claims has adhered to it. It is interesting to note that as a further argument why this Court should deny the writ of *certiorari* in that case, the Government said in its answer to the petition that taxpayers were "adequately protected," since they could sue on an account stated. When the taxpayers did sue on an account stated the Government reversed this position in its arguments and defeated them and vigorously opposed their petitions for the writ of *certiorari. Leisenring v. United States, 3 F. Supp. 853; 4 F. Supp. 993;* cer. den. *291 U. S. 682,* and numerous other cases. The reports teem with cases on which the Government by one technicality or another has avoided carrying out the plain mandate of Congress that payments made after the limitation should be refunded.

Furthermore in its brief in *Lowe Brothers Co. v. United States, No. 864,* October Term 1937, at pages 11 and 12, the Government vigorously argues that the proper year to bring suit is for the year of the overpayment and not for the year to which the credit is made because the credit is void. Among other things, it says "any other construction of *609* leaves it meaningless."

The record undeniably shows that directly conflicting arguments are made by the Government on the same proposition of law whenever the adoption of these arguments will work to its advantage in the instant case and that these arguments are not confined to the lower Courts but are made here. In *Booth Fisheries Co. v. Commissioner, 84 F. (2d) 49, 51,* the Court said:

> "Taxpayers dealing in good faith with their Government should likewise be accorded the utmost of frankness and good faith."

We emphasize the above unquestionably shows when taxpayers have sued for the year to which the credit was made the Government had argued in court that they should have sued for the year of overpayment. This argument was made by the Government in this Court in the *Lowe Brothers case.* When, taking the Government at its word, they sued for the year of overpayment the Government has then argued that they should have sued for the year to which the credit was made, as it argues in this case. All of these arguments were made to defeat a right clearly given a taxpayer by express statutory mandate! In most enlightened countries they would not succeed.

THE SUIT IS NOT ON AN ACCOUNT STATED.

At pages 24 and 25 of its brief the Government argues that the suit is on an account stated. In the cases cited on page 25 of the Government's brief the Courts dismissed the suits because they were concededly and unquestionably on an account stated, which is a contract suit and District Courts do not have jurisdiction of suits against the United States on contracts where the amount exceeds $10,000.

The contention of the Government that a taxpayer in a case such as this was confined to a suit on an account stated was rejected in *Untermyer v. Bowers, 79 F. (2d) 9, 11;* Government's petition for *certiorari* denied *296 U. S. 641.* The lower Courts have uniformly held in recent years that no account stated exists on the facts shown in this case. *Leisenring v. United States, 3 F. Supp. 853; 4 F. Supp. 993;* cer. den. *291 U. S. 682. Certiorari* has been consistently denied. In other words, the Government says that the suit should be in the Court of Claims on an account stated notwithstanding it knows the Court of Claims has consistently held that no account stated exists in these cases and the taxpayers have been denied *certiorari.*

The petition alleges that the claim was rejected and the answer admits this allegation of fact.

THE R. S. 3226 APPLICABLE TO THIS SUIT AND THE R. S. 3226 APPLICABLE TO THE JAFFRAY SUIT ARE RADICALLY DIFFERENT.

R. S. 3226 was radically amended in 1932, the amendment being declared to be applicable to suits brought after its enactment. The reason for the amendment was this. As *R. S. 3226* read, prior to the 1932 amendment,

a taxpayer who did not sue within five years after payment of the tax had to wait until the Commissioner rejected his claim. He might file a claim just before the limitation on its filing ran and the Commissioner might take several years to consider it. If the Commissioner then refused to disallow or reject it the taxpayer could not sue. *Leonard v. United States, 71 Ct. Cls. 775.* To remedy this the statute was amended to strike out the provision requiring suit to be brought within five years after payment and allowing a taxpayer to sue at any time after his claim had been on file for six months. Another thing accomplished by the amendment was to repeal prospectively the decision of this Court in *United States v. Michel, 282 U. S. 656,* which held that the limitation against a taxpayer started to run when a claim was rejected by the Commissioner, notwithstanding the taxpayer did not know it had been rejected and had no means of learning the exact date on which it was rejected. This Court felt the language of the statute necessitated such a construction and reversed the holding of the Circuit Court of Appeals to the contrary. The statute as amended in 1932 (quoted in the taxpayer's brief in the *Jaffray case* argued herewith) provided that suit should not be begun

> "after the expiration of 2 years from the date of mailing by registered mail by the Commissioner to the taxpayer of a notice of the disallowance of the part of the claim to which such suit or proceeding relates."

Under this provision the statute of limitations against a taxpayer never started to run until the Commissioner mailed him by registered mail a notice of disallowance. *Senate Report No. 665; 72nd Congress, 1st Session, page 57.* The effect of this amendment was to place no limitation whatever on allowed claims. Congress evidently

considered that allowed claims would and should be paid and that a limitation on the taxpayer's right to sue for them was not necessary or right.

THE MAKING OF THE CREDIT DID NOT CONSTITUTE A REJECTION OF THE 1917 REFUND CLAIM.

United States v. Michel, 282 U. S. 656, held that (prior to the 1932 amendment) a refund claim was rejected when the Commissioner signed a Schedule disallowing it. The Court has doubtless seen schedules disallowing claims in the record of other cases before it in the past. These schedules are headed "Schedule of Rejected Claims Income Tax Unit." Directly above the signature of the Commissioner, they state:

> "The following claims in number for the refunding, abatement or credit of income taxes have been examined and are hereby rejected in full."

When a credit is made the schedule allowing the credit is entirely different. (See record in *United States v. Swift & Co., 282 U. S. 486.)* Credits, abatements and refunds are distinct. This becomes more apparent when the nature of a refund claim is considered. In a refund claim an action cannot be maintained upon a demand for the refund of money. It is the specific facts asserted in the claim which must be made the basis of the action. *United States v. Garbutt Oil Co., 302 U. S. 528.* When the Commissioner considers the specific facts and concedes and allows them he thereby allows the claim and does not deny it. The statute expressly states he allows the refund or the credit when he signs the Schedule allowing or crediting it. Inasmuch as the statute makes this an allowance it cannot be the converse thereof —rejection. The allowance of a claim and its payment are different things. The Commissioner is not author-

ized to draw and sign checks on the Treasury Department, only the Disbursing Clerk can do this. After the Commissioner has allowed the claim his function has ceased.

If the insurance company advises you you have overpaid your premium for 1938 and you ask its refund and they tell you they will grant your claim and credit the overpayment on your 1939 premium, this certainly does not constitute a rejection of your claim. If later it is discovered that all your 1939 premium was not owing because it was overcomputed by mistake, the contention that your 1938 claim was rejected should not be good. Two different years are involved. That is exactly what happened here. The Commissioner believed he had a right to make the credit of an allowed 1917 overpayment to a later year and made it by mistake as the Courts below held. For this mistake see also *Staten Island Hygeia Ice & Cold Storage Co. v. United States, 85 F. (2d) 68 (C. C. A. 2).* The mistake is not as to the 1917 overpayment but as to the collectibility of the later year's tax.

That the credit was not a disallowance of the refund claim for the earlier year was stated by this Court in *Bonwit Teller & Co. v. United States, 283 U. S. 258,* in which the taxpayer's suit was brought in the Court of Claims within two years of the making of the credit. If the making of the credit had constituted a disallowance of the claim the suit having been brought within two years thereof would have been brought in time, under *R. S. 3226.** On page 11 of its brief, the Government said:

* Until 1932 the statute required suit to be brought within two years after disallowance and within five years after payment. If more than five years had passed and suit had not been brought, a disallowance was necessary. In 1932 the statute was amended to do away with the necessity of a disallowance.

> "The clause permitting suit 'within two years after disallowance' of a claim for refund has no application here, since in the instant case the claim for refund was not disallowed."

This Court in its opinion in *283 U. S.*, at page *265*, said:

> "This case is not within the clause giving 2 years after disallowance because here the claim was allowed."

Furthermore if the rejection of a claim for abatement is not the rejection of a claim for refund as held in *Rock Island R. R. Co. v. United States, 254 U. S. 141*, and if the rejection of a claim for abatement made on the same grounds as a then pending claim for refund is not a rejection of the pending claim for refund as held in *United States v. Factors & Finance Co., 288 U. S. 89, 92*, and if a claim for credit is not a claim for refund as held in *United Shoe Machinery Co. v. White, 87 F. (2d) 363*; cer. den. *302 U. S. 768*, it is hard to see how the *allowance* of a credit can constitute a rejection of a refund claim when the rejection of a credit does not.

However, if the refund claim in the case at bar has never been rejected and if the present suit should be dismissed for want of jurisdiction on this account all the taxpayer would have to do is bring another suit in the District Court since *R. S. 3226* as amended in 1932 lays down no limitation on a suit on an allowed claim. In the words of Justice Holmes in the *Emory, Bird, Thayer case*, the "least" that can be said is that this "would be adding a fifth wheel to the coach."

On point is Tucker v Alexander
275 US 228

However, it is not disputed that the Commissioner as held by the Court below, had a right to reconsider his allowance of the claim. When the taxpayer filed his second claim, calling attention to the mistake of the Commissioner and the Commissioner considered it on the merits and rejected this claim, this action was the first rejection of the taxpayer's claim by the Commissioner and suit within two years thereof was timely and a compliance with *R. S. 3226* as it then stood.

CONCLUSION.

If, as this Court has said, "taxes are the life blood of Government" *(Bull v. United States, 295 U. S. 247, 259)*, it follows that taxpayers are the heart of the Government for they pump the taxes into all the arteries of the body politic. They sustain the legislative, the executive and the judicial branches. If they become unable to sustain these branches the Government will end. Hence taxpayers are entitled to every consideration and to have all doubts resolved in their favor and to have a liberal construction of statutes intended for their benefit. In the language of the street they need every "break" they can get.

The sections of the *Revenue Act* now under consideration were clearly intended for their benefit and they should not be so strictly and technically construed as to emasculate them. A decision against one taxpayer is a decision against every taxpayer for whose benefit the legislation is intended.

All of which is respectfully submitted,

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